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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,  
Plaintiff,

v.

CALMAR INCORPORATED and  
REALEX CORPORATION,  
Defendants.

CIVIL ACTION NO. 84-5271

Filed: December 20, 1984

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

## I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Clayton Act (15 U.S.C. § 25), as amended, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

2. Calmar Incorporated maintains offices, transacts business, and is found within the District of New Jersey.

3. Realex Corporation transacts business and is found within the District of New Jersey.

## II. DEFINITIONS

4. "Regular sprayer" means a plastic pump with a spray head that, when fully depressed, dispenses approximately one cubic centimeter of liquid from a container in the form of a dense, "wet" spray of large particles.

5. "Regular dispenser" means a plastic pump with a spout that, when fully depressed, dispenses a steady stream of approximately one to two cubic centimeters of viscous liquid from a container.

6. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2,600$ ). The HHI takes into account the relative size and distribution of the firms in a

market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

### III. THE DEFENDANTS

7. Calmar Incorporated ("Calmar") is made a defendant herein. Calmar is a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Watchung, New Jersey. Calmar manufactures regular sprayers, regular dispensers, other dispensing devices, plastic bottles, plastic closures, and other molded plastic packaging components at plants located in City of Industry, California, and Washington Court House, Ohio. Calmar had net sales of approximately \$62.3 million for the year ended December 31, 1983. Calmar is engaged in interstate commerce and in activities substantially affecting interstate commerce.

8. Realex Corporation ("Realex") is made a defendant herein. Realex is a corporation organized and existing under the laws of the state of Missouri, with its principal offices in Kansas City, Missouri. Realex manufactures regular sprayers, regular dispensers, other dispensing devices, plastic closures, and other molded plastic packaging components at its plant located in Lee's Summit, Missouri. It also manufactures household insecticides, household herbicides, and artificial



sweeteners, and does contract packaging for manufacturers of household and automotive care products and agricultural chemicals. Realex had net sales of approximately \$25 million for the year ended October 31, 1983. Realex is engaged in interstate commerce and in activities substantially affecting interstate commerce.

#### IV. TRADE AND COMMERCE

9. Regular sprayers are made from injection-molded plastic parts, metal springs, and metal or plastic balls. Manufacturers of regular sprayers make most of the constituent plastic parts, purchase the remaining parts from outside suppliers, and assemble the finished sprayers on highly automated, specially designed assembly lines.

10. Regular sprayers are sold to manufacturers and packagers of consumer products, which incorporate them into the packages in which their products are sold. Regular sprayers are generally placed on containers of liquids that are most conveniently applied in the form of a thick, heavy spray, such as household cleaners, window cleaners, hair sets and conditioners, automotive care products, and plant care products.

11. Regular sprayers differ from all other dispensing devices for liquid consumer products in their physical and functional characteristics, customary uses, means of production, and pricing. Buyers of regular sprayers do not view devices which do not deliver a spray as good substitutes for regular sprayers, because they do not provide the desired method of application of the product. Buyers of regular

sprayers likewise do not view other types of sprayers, including fine mist, trigger, and aerosol sprayers, as good substitutes for regular sprayers. Fine mist sprayers deliver a much smaller volume of product and have a much finer spray pattern than regular sprayers, which makes them unsuitable for many uses to which regular sprayers are put. Trigger sprayers are larger and heavier than regular sprayers, project a different image, and cost about twice as much. Aerosols require special filling and handling procedures, present a greater risk of fire or explosion, may cause a product to foam instead of spray, and in many instances are more expensive than containers of the same product with regular sprayers.

12. Most manufacturers of other types of sprayers and dispensing devices do not manufacture regular sprayers. Manufacturers and buyers of regular sprayers and other dispensing devices recognize regular sprayers as a distinct product.

13. Manufacturers of regular sprayers sell and compete with each other for sales throughout the United States. There are no significant imports of regular sprayers into the United States.

14. The manufacture and sale of regular sprayers constitutes a relevant product market, and the United States is the relevant geographic market in which regular sprayers are sold, within the meaning of Section 7 of the Clayton Act.



15. There are currently three domestic manufacturers of regular sprayers. Calmar is by far the largest, with a 60 percent share of the market. Realex is the second largest with a 23 percent market share. The HHI is approximately 4,400. Calmar's proposed acquisition of Realex would increase the HHI by more than 2,700, to over 7,100.

16. Regular dispensers are made from injection-molded plastic parts, metal springs, and metal or plastic balls. Manufacturers of regular dispensers make most of the constituent plastic parts, purchase the remaining parts from outside suppliers, and assemble the finished dispensers on highly automated, specially designed assembly lines.

17. Regular dispensers are sold to manufacturers and packagers of consumer products, which incorporate them into the packages in which their products are sold. Regular dispensers are generally placed on containers of viscous liquid products such as hand and body lotion and liquid soap.

18. Regular dispensers differ from all other dispensing devices for liquid consumer products in their physical and functional characteristics, customary uses, means of production, and pricing. Buyers do not view other dispensing devices as good substitutes for regular dispensers. Regular dispensers offer a convenient way of dispensing products from containers that generally are meant to be set down and used and

not frequently picked up or handled. This convenience is characteristically preferred by consumers for particular products and containers of particular sizes, and is not available when another type of dispensing device, such as a "flip-top" cap, is used.

19. Most manufacturers of dispensing devices other than regular dispensers do not manufacture regular dispensers. Manufacturers and buyers of regular dispensers and other dispensing devices recognize regular dispensers as a distinct product.

20. Manufacturers of regular dispensers sell and compete with each other for sales throughout the United States. There are no significant imports of regular dispensers into the United States.

21. The manufacture and sale of regular dispensers constitutes a relevant product market, and the United States is the relevant geographic market in which regular dispensers are sold, within the meaning of Section 7 of the Clayton Act.

22. There are currently five domestic manufacturers of regular dispensers. Calmar is the largest with approximately a 58 percent share of the market. Realex is the second largest with approximately a 21 percent market share. One manufacturer produces regular dispensers under license from Realex only for its own use and does not sell to others. The HHI for the market is approximately 4,000. Calmar's proposed acquisition of Realex would increase the HHI by more than 2,400, to over 6,400.

23. Manufacturers of regular sprayers and regular dispensers ship and sell substantial quantities of those products across state lines to locations throughout the United States. They also purchase parts used in their products from states other than the state where their regular sprayers and regular dispensers are assembled, and those parts are regularly shipped across state lines. The production and sale of regular sprayers and the production and sale of regular dispensers are within the flow of and substantially affect interstate commerce.

#### V. VIOLATION ALLEGED

24. On August 6, 1984, Calmar and Realex entered into an Agreement and Plan of Merger (the "merger agreement") by which Realex would merge with Calmar Holding Company, a wholly-owned subsidiary of Calmar. Under the terms of the merger agreement the defendants were to consummate the merger on or before December 31, 1984.

25. The effect of the merger between Calmar and Realex may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual and potential competition between Calmar and Realex in the market for the manufacture and sale of regular sprayers in the United States will be eliminated;

(b) Concentration in the already highly concentrated market for the manufacture and sale of regular sprayers in the United States will be substantially increased;



(c) Competition generally in the market for the manufacture and sale of regular sprayers in the United States may be substantially lessened;

(d) Actual and potential competition between Calmar and Realex in the market for the manufacture and sale of regular dispensers in the United States will be eliminated;

(e) Concentration in the already highly concentrated market for the manufacture and sale of regular dispensers in the United States will be substantially increased; and

(f) Competition generally in the market for the manufacture and sale of regular dispensers in the United States may be substantially lessened.

#### IV. PRAYER

WHEREFORE, plaintiff prays:


1. That preliminary and permanent injunctions be issued preventing and restraining the defendants and all persons acting on their behalf from consummating the merger agreement alleged in paragraph 24, or from going forward with any other plan or agreement by which Calmar would merge with or acquire Realex or any of its assets devoted to the manufacture and sale of regular sprayers or regular dispensers.

2. That the proposed acquisition be adjudged a violation of Section 7 of the Clayton Act.

3. That the plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

Dated:

  
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J. PAUL McGRATH  
Assistant Attorney General

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FRANK SEALES, JR.

  
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VERIFICATION OF COMPLAINT

FRANK SEALES, JR. declares:

1. I am an attorney in the Antitrust Division of the United States Department of Justice.

2. The foregoing complaint for and on behalf of the United States of America was duly prepared under the direction of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice. The facts stated therein have been assembled by authorized employees and counsel for the United States of America. The allegations therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the above is true and correct.

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FRANK SEALES, JR.